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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/341,241	09/14/1999	CHRISTINE DUPUIS	2350-73	4909

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EXAMINER

SHARAREH, SHAHNAM J

ART UNIT PAPER NUMBER

1617

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/341,241	DUPUIS ET AL.	
	Examiner	Art Unit	
	Shahnam Sharareh	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/4/2005, 1/7/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-17 and 20-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-17, 20-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/4/05</u> | 6) <input type="checkbox"/> Other: _____ |

Handwritten initials/signature

DETAILED ACTION

1. Amendments filed on January 4, and 7, 2005 have been entered. Accordingly, claims 15-17, 20-42 are now pending. Claims 15 and 30 are independent product claims. claims 29 and 42 are independent process claims, essentially directed to methods of preparing the claimed product.

The Amendment has modified the scope of the claims to the extent that the nonionic surfactant of the product claims, element (b), is now comprise at least one oxyethyleneated esters of sorbital and of C8-C22 fatty acids. Examiner points out that Tween 20, reads on such limitation.

Pursuant to Applicant's election of species entered on February 20, 2001, in response to Examiner's Requirement mailed on December 20, 2000, the search was directed to encompass compositions comprising non-crosslinked copolymer of (methlacrylic acid / ethyl acrylate/polyoxyethylenated stearyl methacrylate copolymers and the (C8-C22) alkyl polyglucosides, as a surfactant. Upon entry of the amendment filed on January 4, 7, 2005, the scope of the search has been modified to encompass compositions comprising oxyethyleneated esters of sorbital and of C8-C22 fatty acids. Thus, Applicant's arguments with respect to rejection of claims over Almaric alone have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 15-17, 20-22, 24-35, 37-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guerrero et al US Patent 5,236,710 (filed on PTO-892, 5//8/02)

The instant claims comprise cosmetic compositions in the form of a gel comprising (a) at least one non-crosslinked acrylic copolymers having C8-C32 hydrophobic chain in amount of about 0.8-20% by weight of the composition, (b) a surfactant comprising at least on oxyethyleated esters of sorbital and of C8-C22 fatty acids, in a ration of 1/20 to 1/5 with respect to element (a) and in proportion of less than 1% by weight of the total composition, (c) at least one insoluble conditioning agent such as silicon, fatty alcohol or hydrocarbon in ranges of about 0.01-20% weight.

Guerrero teaches aqueous gel compositions comprising acrylates/C10-C30 alkyl acrylate cross polymers in amounts of about 0.1-10% (see col 3, lines 41-45, col 5, lines 61-63 and table I, col 8, lines 1-20). Thus, Guerrero meets the limitation (a) of the instant claims.

Guerrero teaches the use of vehicles such as atty alcohols, silicones, fatty esters or hydrocarbons that falls within the limitations of the instant element (c) of the instant claims. Such moieties include oleyl alcoholol, ceyl alcohol, isobutyl palmitate, silicon oils such as dimethylpolysiloxane, petrolatum, butyl myristate, etc. (see col 4, lines 39-61). The ranges described by Guerror overlap within the limitations of the instant claims (see col 4, line 29).

Guerrero also teaches the use of emulsifiers such as oxyethyleated esters of sorbital, Polysorbate 20 or Tween 20, in amounts of about 0.1-5% by weight which falls within the scope of the element (b) of the instant claims. (see col 5, lines 20-24, col 5,

line 59-col 6, line 31). In fact, at Table I, Guerrero uses such emulsifiers in amounts of about 1%. Guerrero also teaches addition of adjuvants such as sunscreen, emollients, oxidizing agents, etc.. (see table I).

The methods employed for making the aqueous gel of comprise mixing all the above-described elements. Thus, Guerrear teaches the process steps of the instant claims.

Guerrear meets all of claims 15-17, 20-22, 24-35, 37-42 except the explicit range of 1/20 to 1/5 for the claimed amounts of oxyethylenated esters of sorbitol and the acrylic copolymer.

However, Guerrear teaches the concentrations for individual ingredients in his aqueous gel. Thus, it would have been obvious to one of ordinary skill in the art at the time of invention optimize the parameters established by Guerrear, because it is well-established that merely selecting proportions and ranges is not patentable absent a showing of criticality. In re Becket, 33 USPQ. 33 (CCPA 1937). In re Russell, 439 F.2nd 1228, 169 U.S.P.Q. 426 (CCPA 1971). Accordingly, absence the showing of criticality, merely optimizing the concentrations described by Guerrear would have been well within purview of one of ordinary skill in the art.

It is well established that the discovery of an optimum value of a variable in a known invention is normally obvious when parameter optimized was recognized to be a result-effective variable. Here, Guerrear has taught the parameters that control the clarity of gel composition. Thus, merely optimizing the ratios of the surfactant and the acrylic polymer is not viewed to be patentable.

3. Claims 23, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guerrero et al US Patent 5,236,710 as applied to claims 15-17, 20-22, 24-35, 37-42 and further in view of Ha et al US patent 5,585,104. (filed on PTO-892, 11/22/02)

The teachings of Guerrear are described above. Guerrero described various types of oils that may be used in his compositions. Such oily phase include mineral oil, petrolatum oil, paraffin, vegetable oils, etc...(see col 4, lines 40-60). Guerrear only fails to further recite other art-recognized oils such as isododecane or isohexadecanes.

Ha is only used to show that in the cosmetic art, oils such as mineral oils, paraffin, petrolatum and straight or branched chain hydrocarbon such as isododecane, isohexadecane, C7-C40 hydrocarbons are art recognized equivalents and capable of performing the same function.(col 13, lines 4-64, specially lines 50-57).

Thus, it would have been obvious to one of ordinary skill in the art at the time of invention, to use other oil including isododecane or isohexadecane in Guerrear's formulation, because as described by Ha, all such oils as mineral oil, hydrocarbon oils etc.. are viewed to be art-recognized functional equivalents. The ordinary skill in the art would have been motivated to use such hydrocarbons, because as described he would have had a reasonable expectation of success in observing similar results.

Response to Arguments

The Declaration under 37 CFR 1.132 filed by Ludivine Laurent is insufficient to overcome the rejection of claims 15-42. The Declaration only refer(s) to the system described in the above referenced application and not to the individual claims of the

application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716.

Conclusion

No claims are allowed. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahnam Sharareh whose telephone number is 571-272-0630. The examiner can normally be reached on 8:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, PhD can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SS



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SUPERVISORY PATENT EXAMINER